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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
Redpath, et. al.

Serial No.: 09/833,418

Filed: April 12, 2001

Title: System and Method for
Simultaneous Display of
Multiple Object Categories\$ Group Art Unit: 2672
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\$ IBM Corporation
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\$ Research Triangle Park, NC
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Joseph T. Van Leeuwen1/9/06
Date**APPELLANTS' BRIEF (37 CFR § 41.37)**

Sir:

A. INTRODUCTORY COMMENTS

This brief is filed in support of the previously filed Notice of Appeal, filed in this case on November 14, 2005 (actually filed Saturday Nov. 12, effective Nov. 14), which appealed from the decision of the Examiner dated July 12, 2005 finally rejecting claims 1-7 and 9-19. Please charge the required fee for this Appeal Brief to IBM Corporation Deposit Account No. 09-0461.

The two-month deadline for filing this Appeal Brief is January 17, 2005 (as January 14 falls on a Saturday and January 16 is a Federal Holiday), therefore, no extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and the undersigned hereby authorizes the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0461.

Docket No. RSW920000176US1

Page 1 of 20

Atty Ref. No. R106

Redpath, et. al. - 09/833,418

Van Leeuwen & Van Leeuwen
Attorneys at Law
6123 Pebble Garden Court
Austin, Texas 78739
Phone # 512-301-6738
FAX # 512-301-6742

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FROM: Joseph T. Van Leeuwen
Van Leeuwen & Van Leeuwen
Registered Patent Attorneys
6123 Pebble Garden Court
Austin, Texas 78739
Tel No: 512-301-6738
Fax No. 512-301-6742

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Docket No. RSW920000176US1

Serial No. 09/833,418

Atty: GRW / JVL

Applicant: Redpath, et al.

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IBM DOCKET NO. RSW920000176US1
DATE: January 9, 2006

Application Serial No.: 09/833,418

Sir:

Assignee Name: International Business Machines Corporation
Assignee Residence: Armonk, New York

Transmitted herewith for filing is the Patent Application of:

Inventors: Redpath, et al.

For: System and Method for Simultaneous Display of Multiple Object Categories

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Respectfully submitted,

By 
Joseph T. Van Leeuwen
Attorney for Applicant
Registration No. 44,383
Telephone: (512) 301-6738
Facsimile: (512) 301-6742

Atty Ref. No. IBM-R106

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B. REAL PARTY IN INTEREST

The real party in interest in this appeal is International Business Machines Corporation, which is the assignee of the entire right, title, and interest in the above-identified patent application.

C. RELATED APPEALS AND INTERFERENCES

With respect to other prior or pending appeals, interferences, or judicial proceedings that are related to, will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such prior or pending appeals, interferences, or judicial proceeding known to Appellants, Appellants' legal representative, or assignee.

D. STATUS OF CLAIMS*1. Total number of claims in application*

There are 18 claims pending. Three claims are independent claims (1, 9, and 13), and the remaining claims are dependent claims.

2. Status of all claims in application

- Claims canceled: 8 and 20
- Claims withdrawn from consideration but not canceled: none
- Claims pending: 1-7 and 9-19
- Claims allowed: None
- Claims rejected: 1-7 and 9-19

3. Claims on appeal

The claims on appeal are: 1-7 and 9-19.

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E. STATUS OF AMENDMENTS

All amendments have been entered in this case. No amendments have been made to the claims after the Final Office Action.

F. SUMMARY OF CLAIMED SUBJECT MATTER

Appellants provide a concise summary of the claimed subject matter as follows. Claims 1, 9, and 13 are independent claims. Note that claims 1-7 are method claims, claims 9-12 are information handling system claims, and claims 13-19 are computer program product claims. Independent claim 13 includes means plus function limitations that correspond to the method steps set forth in independent claim 1. An information handling system capable of implementing Appellants' invention, as claimed in independent claim 9, is shown in Figure 6, and described in Appellants' specification on page 17 line 12 – page 18 line 26. Support for independent computer program product claim 13 is described in Appellants' specification on page 18 line 27 - page 19, line 14. In addition, support for each of the method steps, computer system limitations, and means plus function limitations of the independent claims are discussed below. The specific citations to Appellants' Figures and Specification are meant to be exemplary in nature, and do not limit the scope of the claims. In particular, the citations below do not limit the scope of equivalents as provided under 35 U.S.C. § 112, sixth paragraph.

In one aspect of Appellants' invention, claim 1 claims selecting one or more objects to be displayed in a plurality of layers (see e.g., Figure 4, elements 410 - 460; specification page 14, line 27 through page 15, line 14); identifying a plurality of non-spatially distinguishable display attributes, wherein one or more of the non-spatially distinguishable display attributes corresponds to each of the layers (see e.g., Figure 5, element 540; specification page 16, line 9 through page 17, line 11); matching each of the objects to one of the layers (see e.g., Figure 5, element 540; specification page 16, line 9 through page 17, line 11); applying the non-spatially distinguishable display attributes corresponding to the layer for each of the matched objects (see e.g., Figure 5, element 540; specification page 16, line 9 through page 17, line 11); determining a layer order for the plurality of layers (see e.g., Figure 4, elements 470 - 490; specification page 14, line 27 through page 15, line 14), wherein the layer order determines a display emphasis

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corresponding to the objects from the plurality of objects in the corresponding layers (see e.g., Figure 5, element 550; specification page 16, line 9 through page 17, line 11); and displaying the objects with the applied non-spatially distinguishable display attributes based upon the determination, wherein the objects in a first layer from the plurality of layers are visually distinguished from the objects in the other plurality of layers based upon the non-spatially distinguishable display attributes of the first layer (see e.g., Figure 2; specification page 12, line 17 through page 13, line 19).

Support for each of Appellants' means plus function limitations set forth in dependent claims is provided below. Note that general support for a computer program product is discussed above. The specific citations to Appellants' Figures and Specification are meant to be exemplary in nature, and do not limit the scope of the claims, as provided under 35 U.S.C. § 112, sixth paragraph.

Claim 14 includes the following means plus function limitations:

means for receiving a request from a user to rearrange the layers; (see e.g., Figure 4, element 480; specification page 14, line 27 through page 15, line 14);

means for rearranging the layers in response to the request (see e.g., Figure 4, element 490; specification page 14, line 27 through page 15, line 14), the rearranging including:

means for re-matching one or more objects to a different layer from the plurality of layers; (see e.g., Figure 5, elements 530 and 540; specification page 16, line 9 through page 17, line 11)

means for applying the non-spatially distinguishable display attributes corresponding to the different layer to the one or more re-matched objects; (see e.g., Figure 5, element 540; specification page 16, line 9 through page 17, line 11)and

means for displaying the one or more re-matched objects (see e.g., Figure 5, element 550; specification page 16, line 9 through page 17, line 11).

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Claim 15 includes the following means plus function limitation:

means for reading the objects from a data store; (see e.g., Figure 5, element 530; specification page 16, line 9 through page 17, line 11) and

means for reading one or more object attributes corresponding to each object from the data store, (see e.g., Figure 5, elements 530 and 540; specification page 16, line 9 through page 17, line 11)

wherein the matching further comprises:

means for matching the object attributes corresponding to each object to one or more layer attributes corresponding to each layer (see e.g., Figure 5, elements 510 - 560; specification page 16, line 9 through page 17, line 11).

Claim 16 includes the following means plus function limitations:

means for creating the objects; (see e.g., Figure 3; element 310 specification page 13, line 20 through page 14, line 26);

means for setting one or more object attributes corresponding to each object (see e.g., Figure 3; element 320 specification page 13, line 20 through page 14, line 26); and

means for storing the object and the object attributes in a data store (see e.g., Figure 3; element 340 specification page 13, line 20 through page 14, line 26).

Claim 17 includes the following means plus function limitation:

means for establishing one or more relationships from at least one of the objects to one or more other objects (see e.g., Figure 3; element 330 specification page 13, line 20 through page 14, line 26);

Claim 19 includes the following means plus function limitations:

means for displaying one or more relationship lines connecting at least one of the objects to one or more other objects (see e.g., specification page 5, lines 22 – 23 and Figures 1 and 2, specification page 8, line 8 through page 13, line 19).

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G. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-7 and 9-19 stand rejected under 35 U.S.C. § 102(b) as being anticipated and therefore unpatentable over a non-patent reference entitled "Mastering Windows 3.1 Special Edition" (hereinafter referred to as "MW3").

H. ARGUMENTS

**As Cited by the Examiner, the MW3 Reference is an Invalid
Reference Because it does NOT have a Publication Date**

In response to Appellants' assertion that the MW3 reference does not have a proper publication date, the Examiner responds that "any person of skill in the art... will know that Windows 3.1 was used by the public between approximately 1988 and 1992." The Examiner points out that an Internet search reveals the "title" of the publication and provided a page resulting from a Google search. However, neither this Google page, nor the pages previously supplied by the Examiner, include a publication date. Appellants respectfully submit that the MPEP makes no such provision, or assumption, for providing a publication date (see MPEP § 2128). Appellants further point out that simply because a technology, such as Windows 3.1 was in use at a particular time does not mean that a reference, such as the MW3 reference, was published at that same time. Appellants merely requested that a page of the reference be supplied showing a publication date. Because the Examiner has not been able to provide a proper publication date for the reference, Appellants respectfully submit that the reference is not a valid reference under MPEP § 2128. Nonetheless, as discussed below, even if the Board deems the MW3 reference to be a valid reference, it simply does not anticipate Appellants' claimed invention.

**The MW3 Reference Does Not Anticipate
Appellants' Claimed Invention Set Forth in the Independent Claims**

Each of Appellants' independent claims include limitations not taught or suggested by the MW3 reference. MPEP § 2131 provides that in order to anticipate a claim, the reference *must* teach every element of the claim. Specifically, MPEP § 2131 states (emphasis added):

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"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001) (claim to a system for setting a computer clock to an offset time to address the Year 2000 (Y2K) problem, applicable to records with year date data in "at least one of two-digit, three-digit, or four-digit" representations, was held anticipated by a system that offsets year dates in only two-digit formats). See also MPEP § 2131.02. "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Note that, in some circumstances, it is permissible to use multiple references in a 35 U.S.C. 102 rejection. See MPEP § 2131.01.

Appellants respectfully assert that the cited references simply fail to teach each and every element as set forth in Appellants' claims. Each of Appellants' independent claims is directed at displaying layered data and includes the limitations of:

- selecting one or more objects to be displayed in a plurality of layers;
- identifying a plurality of non-spatially distinguishable display attributes, wherein one or more of the non-spatially distinguishable display attributes corresponds to each of the layers;
- matching each of the objects to one of the layers;
- applying the non-spatially distinguishable display attributes corresponding to the layer for each of the matched objects;
- determining a layer order for the plurality of layers, wherein the layer order determines a display emphasis corresponding to the objects from the plurality of objects in the corresponding layers; and
- displaying the objects with the applied non-spatially distinguishable display attributes based upon the determination, wherein the objects in a first layer from

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the plurality of layers are visually distinguished from the objects in the other plurality of layers based upon the non-spatially distinguishable display attributes of the first layer.

The MW3 reference is a chapter directed towards teaching the File Manager that was used to display directories and files within directories in older versions of the Microsoft Windows operating system. The version of the File Manager shown in MW3 is that included with the Windows 3.1 operating system. The Windows 3.1 operating system was an operating system offered prior to the release of Windows 95™ in 1995.

The Office Action contends that the MW3 reference shows “selecting one or more objects to be displayed in a plurality of layers” and explains that the subdirectories are the “layers” and the selection of the “one or more objects” (i.e., subdirectories) is performed by selecting “a root directory object.” Next, the Office Action contends that MW3 shows “identifying a plurality of non-spatially distinguishable display attributes, wherein one or more of the non-spatially distinguishable display attributes corresponds to each of the layers” because the MW3 reference shows different icons corresponding to files within the various directories (citing pages 112 and 113). However, as one of skill in the art appreciates, various files reside within any given subdirectory, so the icons within a particular directory cannot be used to differentiate one subdirectory from another because each may have the same files. In fact, Figure 4.4 appearing on page 112 of MW3 shows exactly that – several different file types (icons) within the directory being shown. Therefore, the display attributes taught by MW3 (the various icons) simply cannot be used to differentiate between the various layers (subdirectories).

The Office Action contends that the MW3 reference teaches “determining a layer order for the plurality of layers, wherein the layer order determines a display emphasis corresponding to the objects from the plurality of objects in the corresponding layers,” citing Figure 4.2 shown on page 105. The Office Action has associated “directories” with Appellants’ “layers” and files within a directory as Appellants’ “objects.” Appellants note that no files (“objects”) are even shown in Figure 4.2 on page 105. Objects (files) for one layer (subdirectory) are shown in Figure 4.4 on page 112, however no “display emphasis” is taught or suggested so that the objects in the selected directory (layer) are distinguished from objects in another directory. In order to anticipate Appellants’ claimed limitation, the MW3 reference would need to teach or suggest

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displaying objects (files) from a plurality of layers (subdirectories) in a way such that objects (files) in one of the layers (subdirectories) are visually distinguished from objects (files) in the other layers (subdirectories) with a display emphasis applied to a plurality of objects (files). Not only does the MW3 reference not teach or suggest the layering techniques as taught and claimed by Appellants, it also does not provide any “display emphasis” that emphasizes some objects over other objects. The Final Office Action fails to point to any part of the MW3 reference that teaches or suggests providing such a “display emphasis” of some objects over other objects, as taught and claimed by Appellants.

Finally, it appears that Appellants’ claimed limitation of “displaying the objects with the applied non-spatially distinguishable display attributes based upon the determination, wherein the objects in a first layer from the plurality of layers are visually distinguished from the objects in the other plurality of layers based upon the non-spatially distinguishable display attributes of the first layer” is not even discussed in the Office Action. As previously mentioned, in order for a reference to anticipate Appellants’ claimed invention, it must teach each and every claimed limitation. The Office Action does not even contend that the MW3 reference teaches Appellants last two limitations, and indeed, upon closer review, it is apparent that the MW3 reference falls far short of teaching or suggesting these limitations. As pointed out in the preceding paragraph, Figure 4.2 on page 105 does not even show displaying both layers (subdirectories) and objects (files). Appellants note that the File Manager software within Windows 3.1, as taught by MW3, can show the objects (files) within a single layer (subdirectory), as shown in Figure 4.4 on page 112. However, no where does MW3 teach or suggest displaying a plurality of objects (files) from a plurality of layers (subdirectories) in a manner such that objects in one layer are visually distinguished from objects in the other layers using non-spatially distinguishable display attributes. Accordingly, Appellants respectfully request that the Board **REVERSE** the rejections of each of the independent claims.

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The Examiner Has Not Met Burden in Rejecting Appellants'
Dependent Claims as being "Inherent" in the MW3 Reference

Appellants note that the Office Action does not detail rejections of any of Appellants dependent claims. Instead, in rejecting claims 2-7, 10-12, and 14-19 the Final Office Action simply states that each of these limitations "are inherent in the reference MW3." Appellants respectfully assert that each of these rejections is improper as the Examiner "must provide rationale or evidence tending to show inherency" (MPEP § 2112). In Appellants' previous Response (filed 4/11/2005), Appellants noted that the Examiner did not provide any basis for rejecting Appellants' dependent claims and respectfully directed the Examiner's attention to MPEP § 707.07(g) which indicates that "piecemeal" examination should be avoided as much as possible and directs examiners to reject each claim on all valid grounds.

Furthermore, Appellants respectfully assert that the Examiner has misapplied "inherency" rejections to Appellants' dependent claims. Without providing any rationale or evidence, the Examiner avers that the limitations of each of these claims is "inherent" in the MW3 reference. An inherency rejection can be made when the prior art "seems to be identical except that the prior art is silent to an inherent characteristic" (MPEP 2113 Section III). In Appellants' claims, the dependent claims add many limitations to the limitations provided in the dependent claims. There is no basis whatsoever for the "inherency" rejection. A review of these limitations makes it amply clear that the Examiner's inherency rejection is wholly improper, especially in light of the fact that the Examiner has provided no evidence or rationale for these rejections other than a conclusory statement that the claims "are inherent in the reference." Accordingly, Appellants respectfully request that the Board REVERSE each of these rejections as being unfounded, baseless and improper as they have been used without supporting evidence or rationale as required in MPEP 2113.


Claims 2-7 each depend, directly or indirectly, on claim 1 and, therefore, are each allowable over MW3 for at least the same reasons that claim 1 is allowable over MW3. Likewise claims 10-12 and 14-19 are each dependent, directly or indirectly, on claims 9 and 13, respectively, and are allowable over MW3 for at least the same reasons that their respective independent claims are allowable.

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Conclusion

For the foregoing reasons, Appellants submit that claims 1-7 and 9-19 allowable over the MW3 reference. Accordingly, Appellants respectfully request that the Examiner's claim rejections be reversed and that claims 1-7 and 9-19 be allowed.

Respectfully submitted,

By 
Joseph T. Van Leeuwen, Reg. No. 44,383
Van Leeuwen & Van Leeuwen
Attorneys for Appellants
Telephone: (512) 301-6738
Facsimile: (512) 301-6742

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I. APPENDIX OF CLAIMS

1. A method of displaying layered data, said method comprising:

selecting one or more objects to be displayed in a plurality of layers;

identifying a plurality of non-spatially distinguishable display attributes, wherein one or more of the non-spatially distinguishable display attributes corresponds to each of the layers;

matching each of the objects to one of the layers;

applying the non-spatially distinguishable display attributes corresponding to the layer for each of the matched objects;

determining a layer order for the plurality of layers, wherein the layer order determines a display emphasis corresponding to the objects from the plurality of objects in the corresponding layers; and

displaying the objects with the applied non-spatially distinguishable display attributes based upon the determination, wherein the objects in a first layer from the plurality of layers are visually distinguished from the objects in the other plurality of layers based upon the non-spatially distinguishable display attributes of the first layer.
2. The method as described in claim 1 further comprising:

receiving a request from a user to rearrange the layers;

rearranging the layers in response to the request, the rearranging including:

re-matching one or more objects to a different layer from the plurality of layers;

applying the non-spatially distinguishable display attributes corresponding to the different layer to the one or more re-matched objects; and

displaying the one or more re-matched objects.

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3. The method as described in claim 1 further comprising:
reading the objects from a data store; and
reading one or more object attributes corresponding to each object from the data store,
wherein the matching further comprises:

matching the object attributes corresponding to each object to one or more layer
attributes corresponding to each layer.
4. The method as described in claim 1 further comprising:
creating the objects;
setting one or more object attributes corresponding to each object; and
storing the object and the object attributes in a data store.
5. The method as described in claim 4 further comprising:
establishing one or more relationships from at least one of the objects to one or more
other objects.
6. The method as described in claim 1 wherein the non-spatially distinguishable display
attributes are selected from the group consisting of: color hue, color value, color
saturation, size, three dimensional image, animation, shading, fill pattern, line pattern,
line weight, opaqueness, transparency, shape, and object anomaly.

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7. The method as described in claim 1 further comprising:
displaying one or more relationship lines connecting at least one of the objects to one or more other objects.
8. (cancelled)
9. An information handling system comprising:
one or more processors;
a memory accessible by the processors;
a nonvolatile storage area accessible by the processors;
a display screen accessible by the processors; and
a layered data display tool to display layered data on the display screen, the layered data display tool including:
 - logic for selecting one or more objects to be displayed in a plurality of layers;
 - identification logic to identify a plurality of non-spatially distinguishable display attributes, wherein one or more of the non-spatially distinguishable display attributes corresponds to each of the layers;
 - matching logic for matching each of the objects to one of the layers;
 - applicator logic to apply the non-spatially distinguishable display attributes corresponding to the layer for each of the matched objects;
 - determination logic for determining a layer order for the plurality of layers, wherein the layer order determines a display emphasis corresponding to the objects from the plurality of objects in the corresponding layers; and
 - display control logic to display the objects with the applied non-spatially distinguishable display attributes, wherein the objects in a first layer from the plurality of layers are visually distinguished from the objects in the other plurality of layers based upon the non-spatially distinguishable display attributes of the first layer.

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10. The information handling system as described in claim 9 further comprising:
- a rearranging request received from a user;
 - rearranging logic to rearrange the displayed layers, the rearranging logic including:
 - re-matching logic to re-match one or more objects to a different layer from the plurality of layers;
 - application logic to apply the non-spatially distinguishable display attributes corresponding to the different layer to the one or more re-matched objects; and
 - display logic to display the one or more re-matched objects.
11. The information handling system as described in claim 9 wherein the non-spatially distinguishable display attributes are selected from the group consisting of: color hue, color value, color saturation, size, three dimensional image, animation, shading, fill pattern, line pattern, line weight, opaqueness, transparency, shape, and object anomaly.
12. The information handling system as described in claim 9 further comprising:
- logic to read the objects from a data store within the nonvolatile storage area; and
 - logic to read one or more object attributes corresponding to each object from the data store,
- wherein the matching logic further comprises:
- logic to match the object attributes corresponding to each object to one or more layer attributes corresponding to each layer.

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13. A computer program product stored on a computer usable medium for displaying layered data, said computer program product comprising:
- means for selecting one or more objects to be displayed in a plurality of layers;
 - means for identifying a plurality of non-spatially distinguishable display attributes, wherein one or more of the non-spatially distinguishable display attributes corresponds to each of the layers;
 - means for matching each of the objects to one of the layers;
 - means for applying the non-spatially distinguishable display attributes corresponding to the layer for each of the matched objects;
 - means for determining a layer order for the plurality of layers, wherein the layer order determines a display emphasis corresponding to the objects from the plurality of objects in the corresponding layers; and
 - means for displaying the objects with the applied non-spatially distinguishable display attributes, wherein the objects in a first layer from the plurality of layers are visually distinguished from the objects in the other plurality of layers based upon the non-spatially distinguishable display attributes of the first layer.
14. The computer program product as described in claim 13 further comprising:
- means for receiving a request from a user to rearrange the layers;
 - means for rearranging the layers in response to the request, the rearranging including:
 - means for re-matching one or more objects to a different layer from the plurality of layers;
 - means for applying the non-spatially distinguishable display attributes corresponding to the different layer to the one or more re-matched objects; and
 - means for displaying the one or more re-matched objects.

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15. The computer program product as described in claim 13 further comprising:
- means for reading the objects from a data store; and
- means for reading one or more object attributes corresponding to each object from the data store,
- wherein the matching further comprises:
- means for matching the object attributes corresponding to each object to one or more layer attributes corresponding to each layer.
16. The computer program product as described in claim 13 further comprising:
- means for creating the objects;
- means for setting one or more object attributes corresponding to each object; and
- means for storing the object and the object attributes in a data store.
17. The computer program product as described in claim 16 further comprising:
- means for establishing one or more relationships from at least one of the objects to one or more other objects.
18. The computer program product as described in claim 13 wherein the non-spatially distinguishable display attributes are selected from the group consisting of: color hue, color value, color saturation, size, three dimensional image, animation, shading, fill pattern, line pattern, line weight, opaqueness, transparency, shape, and object anomaly.

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19. The computer program product as described in claim 13 further comprising:
means for displaying one or more relationship lines connecting at least one of the objects
to one or more other objects.
20. (cancelled)

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J. EVIDENCE APPENDIX

Not applicable.

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K. RELATED PROCEEDINGS APPENDIX

Not applicable.